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**FTAA - COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION
OF CIVIL SOCIETY**

COVER SHEET

Name (s)	Donald R. Mackay
Address	8354 Nashdale Dr. RR2, Metcalfe Ontario, Canada K0A – 2P0 Tel: 613-821-9289 e-mail: donald_mackay@sympatico.ca
Organization (s) (if applicable)	Private Citizen
Country (ies) / Region (s)	Canada

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ISSUES ADDRESSED (Check all that apply)

Agriculture	Subsidies, Antidumping and Countervailing Duties	
Competition Policy	Civil Society	
Dispute Settlement	Electronic Commerce	
Government Procurement	Smaller Economies	
Intellectual Property Rights	The FTAA Process	
Investment	Other: Accession and Non-Application	
Market Access	Provisions in the FTAA.	
Services		

EXECUTIVE SUMMARY – 2 pages maximum – (see Open Invitation):

This submission recommends that the FTAA include, in its final form, provisions for accession by non-founding Members and for non-application. A provision on accession would address three possible conditions.

First, the FTAA negotiations are being conducted among 34 states in the Western Hemisphere. One of the conditions of participation in the FTAA process is that states must have a democratically elected government. As a consequence of this condition, not all of the states enjoying national, and broadly recognized, sovereignty in the Hemisphere are participants in the FTAA negotiations. Geo-political situations, however, are not fixed or permanent. States transition from non-democratic conditions to democratic conditions from time to time and it is the widespread hope that the 35th sovereign state in the Hemisphere will also so-transition sometime in the future. A FTAA provision on accession would allow for the future membership in the FTAA in such circumstances.

Second, it is also the case that certain territories in the Hemisphere do not claim or enjoy full national sovereignty. A number of geographically specific territories have the currently status of dependent or semi-dependent territories of other recognized sovereign states. Such a situation is not necessarily a permanent state of affairs, as the history of de-colonization makes clear. Thus, it is possible that new sovereign states might arise in the Hemisphere and, as noted above, an accession provision would afford a new sovereign state an opportunity to gain membership in the FTAA.

Third, a currently participating country in the FTAA negotiations might withdraw from the negotiations before they are completed and would thus not have the status normally associated with being a founding member. The commercial policy of a country in such circumstances might change so that it might seek FTAA membership at some future point in time. Additionally, a currently FTAA participating country might find itself unable to complete full legislative ratification of the agreement as negotiated by its respective executive. Domestic political alignments could also change over time and a country that had legislatively rejected membership in the FTAA might find itself desirous of membership. Depending on other terms of the FTAA, a country may also not be able to complete ratification of the agreement within a specified time-frame and might be required to avail itself of an accession provision in order to gain membership.

Recalling that all sub-regional agreements currently existing in the Western Hemisphere contain such provisions, an accession provision – generically – can be cast as either geographically specific or not. It is recommended that if the FTAA, in its final form proves to be both “deep and wide” in its conditions of liberalization then the accession provision should be non-geographically specific. If the conditions of liberalization are not “deep and wide” then there is likely to be little extra-hemispheric interest in accession and a geographically specific provision would represent moderately intelligent, collective, public policy on the part of the founding members.

Finally, it is conceivable that a FTAA Member might not wish to extend commercial preferences to an acceding state for bilateral reasons. In such circumstances the benefits of regional liberalization would be denied to other FTAA Members who might not exhibit the same bilateral difficulties with an acceding state. Therefore, to guard against what might be termed a dictatorship of the minority, a provision for non-application should also be included in the FTAA. In this way, a single state or a minority of states would also not be held hostage to what is often termed a tyranny of the majority. Accession would be provided for, based on requirements to be established between the FTAA members on the one hand and the acceding state on the other and still each individual and sovereign state would retain for itself the final decision on whether it wished to participate or not.

Draft provisions are provided below.

A. Accession.

1. Any State or separate customs territory [within the Western Hemisphere] may accede to this Agreement, on terms to be agreed between it and the FTAA Member States.

B. Non-Application.

1. The FTAA shall not apply between any Member State and any Acceding State if the Member State does not consent to such application.

